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NTSB Order No. EA-4508

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of December, 1996

_____)	
LINDA HALL DASCHLE,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14234
v.)	
)	
JUAN J. REINA,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, issued on March 1, 1996, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator

¹ The initial decision, an excerpt from the hearing transcript, is attached.

suspending respondent's airman certificate, on finding that respondent had violated 14 C.F.R. 91.13(a) in connection with two flights in which he was the pilot-in-command of a twin-engine Islander aircraft and landed on a taxiway at the Borinquen Airport (also Coast Guard Air Station) at Aguadilla, Puerto Rico.² The law judge, however, reduced the Administrator's 120-day proposed suspension to a suspension of 30 days and a \$500 civil penalty. We grant the Administrator's appeal and reinstate the proposed 120-day suspension (without a civil penalty).

The Administrator charged that respondent had twice landed on a taxiway, when there was no reason why he could not and did not land on the runway. Respondent denied doing so. The law judge found that respondent was not a credible witness in his denial of the charges. The law judge continued:

There is ample evidence that landing an aircraft on a taxiway adjacent to buildings, within 170 feet from buildings and aircraft, with personnel on the ground and parked aircraft and other vehicles, creates at least a potential hazard to persons and property of value. There was no reason, other than lack of care and/or poor judgement, for the Respondent to land on the taxiway Respondent's actions on both instances were at least careless The cases cited by the

² Section 91.13, **Careless or reckless operation**, reads:

(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

Administrator reflect sanctions from 180 days with other violations, to 30 days. I find that the circumstances here are somewhat more egregious than a case which resulted from a simple error in judgment. Here Respondent intended clearly to land on the taxiway, but I disagree that a sanction of 120 days suspension is warranted.

Tr. at 288. The Administrator argues that the law judge abused his discretion in this conclusion, and contends that the law judge failed to give due deference to his Enforcement Sanction Guidance Table (FAA Order 2150.3A).

A law judge's discretion in sanction modification is not limitless. Although the Board has authority to modify sanction, it is constrained by two principles. First, its decisions must be consistent with precedent, or they must clearly explain the deviation. Second, pursuant to 49 U.S.C. 44703(c)(2), the Board is also generally bound by the Administrator's "validly adopted interpretations of laws and regulations," which include the Administrator's sanction guidance table.

The law judge discussed three cases cited to him by the Administrator and relevant to determining the appropriate sanction. We cannot discern how, from them, the law judge concluded that a sanction of 30 days' suspension and \$500 would be appropriate in this case.

In Administrator v. Cobb and O'Connor, 3 NTSB 98 (1977), private pilots engaged in one instance of improperly low flight and were found to have been careless in

needlessly landing on a taxiway rather than a proper landing area. A 180-day suspension was imposed.

In Administrator v. Mitchell, 2 NTSB 2205 (1977), the pilot of an air taxi was charged with numerous regulatory violations (among other things, operating without clearance, operating in less than visual flight rules conditions without instrument rating, operating an aircraft when his certificate was under suspension, and landing on a taxiway). Revocation was ordered.

In Administrator v. Brandano, 3 NTSB 1823 (1979), the pilot of a passenger-carrying flight landed at Logan Airport on a taxiway, rather than a runway, thus also violating a clearance, in addition to being careless. The weather was bad and, as he approached for landing, what he thought was the runway was the taxiway. When he saw his error, it was too late to do a go-around. A 30-day suspension was ordered due to respondent's failure to assure that he had the runway or its markings clearly in sight before continuing his descent. However, the Board found various mitigating factors, such as the difficulty of this approach, especially in bad weather with low visibility. Although this is the only case with a 30-day suspension, the facts here are so different from the situation before us today that, even adding a \$500 penalty does not approach consistent policymaking.

Even the law judge here found no mitigating circumstances in respondent's actions -- respondent landed his aircraft on the taxiway twice during a 1-week period. We fail to see how the law judge could conclude, in light of the precedent he cited and the lack of any mitigating circumstances, that the sanction he imposed was appropriate. Precedent, instead, supports the 120-day suspension proposed by the Administrator, as the facts of this case fit it between those of the Brandano and Cobb cases.

On appeal, the Administrator also argues that the law judge's decision is inconsistent with his sanction guidance table and, therefore, that the law judge failed to follow the statutory direction to defer to "validly adopted interpretations of laws and regulations." In light of our earlier conclusion, we need not reach this issue. However, we feel compelled to note our concern with the Administrator's failure to offer this argument before the law judge, thus depriving him of information that might have resulted in a different decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted; and
2. The 120-day suspension of respondent's commercial pilot certificate shall begin 30 days from the date of service of this order.³

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

³ For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to Federal Aviation Regulation section 61.19(f).